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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,393	12/03/2003	Ajay Gupta	48354-0001-00-US (228150)	5022
23973 7590 12/31/2007 DRINKER BIDDLE & REATH ATTN: INTELLECTUAL PROPERTY GROUP ONE LOGAN SQUARE 18TH AND CHERRY STREETS PHILADELPHIA, PA 19103-6996			EXAMINER FOREMAN, JONATHAN M	
			ART UNIT 3736	PAPER NUMBER
			MAIL DATE 12/31/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/725,393

Applicant(s)

GUPTA, AJAY

Examiner

Jonathan ML Foreman

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-14,17-26,28,30-42,44-51 and 53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-14,17-26,28,30-42,44-51 and 53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

New grounds of rejection are contained within this Office Action. Accordingly this action has been made Non-Final.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 4 – 14, 17 - 26, 28, 30, 32, 34, 36 – 42, 44 – 47, 49, 51 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,002,065 to LaCourse et al. in view of U.S. Patent No. 6,478,736 to Mault.

In regard to claims 1, 4 – 14 and 17 - 26, LaCourse et al. disclose a combination electronic communication and medical diagnostic apparatus including a component (103) for generating and displaying quantified vibration to be used in a medical diagnosis. The component generates vibration of a fixed magnitude or of a variable magnitude in a linear manner (Col. 3, line 53 – Col.4, line 56). The component generates vibration of a fixed frequency or of a variable frequency. The component generates a plurality of sets each of a fixed magnitude or frequency (Col. 3, line 53 – Col.4, line 56). When the apparatus is applied to a subject, threshold for the perception or disappearance of vibration can be determined as a measure of nerve function to detect neuropathy (Col. 5, lines 58 – 60). LaCourse et al. disclose the apparatus being a computer based device, but fail to disclose the component having a selectable mode different from the first wherein the device operates as a portable electronic device from the group consisting of a cellular phone, pager and

beeper. However, Mault teaches a diagnostic computer based system. Mault further teaches that in addition to being a computer based system, the system can be a portable electronic device selected from the consisting of a cellular phone, pager and beeper (Col. 6, lines 13 – 20) that has a first and second functionality (Col. 6, lines 4 – 8). The claims would have been obvious because a particular known technique was recognizes as part of the ordinary capabilities of one skilled in the art. It would have been obvious to one having ordinary skill in the art at the time of the invention to apply the technique of combining a diagnostic and communication apparatus as taught by Mault to improve the vibratory screening and diagnostic system as disclosed by LaCourse et al. for the predictable result of having a functioning computer based diagnostic system that can be used as a portable communication device. .

In regard to claims 28, 30, 32, 34, 36 – 42, 44 – 47, 49, 51 and 53, LaCourse et al. disclose a method including providing combination electronic communication and medical diagnostic apparatus including and a component (103) for generating vibration to be used in a medical diagnosis. LaCourse et al. disclose generating vibration and applying the apparatus to the extremity of a subject (Col. 3, lines 43 – 46); and diagnosing neuropathy based on detection or non-detection of vibration by the subject (Col. 5, lines 58 – 60). LaCourse et al. discloses determining a threshold for the subject's ability to detect vibration of a predetermined magnitude or frequency. LaCourse et al. discloses determining a perception threshold for the subject's ability to detect vibration by increasing the magnitude or frequency of vibration. LaCourse et al. discloses determining a disappearance threshold for the subject's ability to no longer detect vibration by decreasing the magnitude or frequency of vibration (Col. 3, line 53 – Col.4, line 56). The vibration includes a predetermined magnitude or frequency equal to about 95th – 97th percentiles of a normal population. LaCourse et al. discloses a fixed magnitude or frequency or a variable magnitude or frequency (Col.

3, line 53 – Col.4, line 56). LaCourse et al. disclose the apparatus being a computer based device, but fail to disclose the component having a selectable mode different from the first wherein the device operates as a portable electronic device from the group consisting of a cellular phone, pager and beeper. However, Mault teaches a diagnostic computer based system. Mault further teaches that in addition to being a computer based system, the system can be a portable electronic device selected from the consisting of a cellular phone, pager and beeper (Col. 6, lines 13 – 20) that has a first and second functionality (Col. 6, lines 4 – 8). The claims would have been obvious because a particular known technique was recognizes as part of the ordinary capabilities of one skilled in the art. It would have been obvious to one having ordinary skill in the art at the time of the invention to apply the technique of combining a diagnostic and communication apparatus as taught by Mault to improve the vibratory screening and diagnostic system as disclosed by LaCourse et al. for the predictable result of having a functioning computer based diagnostic system that can be used as a portable communication device.

3. Claims 31, 33, 35, 48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Patent No. 5,002,065 to LaCourse et al. in view of U.S. Patent No. 6,478,736 to Mault as applied to claims 30, 32, 34, 47 and 49 above, and further in view of US Patent No. 5,931,793 to Laudadio.

In regard to claims 31, 33, 35, 48 and 50, LaCourse et al. in view of Mault disclose determining a vibration threshold in order to diagnose a medical condition, but fail to disclose grading the threshold low, medium, or high when compared to a preset standard thereby indicating the severity of the medical condition. However, Laudadio discloses determining a vibration threshold and grading the threshold low, medium, or high when compared to a preset standard thereby indicating the severity of the medical condition (Col. 3, lines 18 – 25). It would have been

obvious to one having ordinary skill in the art at the time the invention was made to modify the method as disclosed by LaCourse et al. and Mault to grade the vibration threshold low, medium, or high when compared to a preset standard as taught by Laudadio in order to quantify minimal impairment, moderate neuropath and severe neuropathy (Col. 3, lines 18 – 25).

Response to Arguments

4. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (571)272-4724. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on (571)272-4726. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JMLF

